

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 15-cr-00348-ERK
:
- versus - : U.S. Courthouse
: Brooklyn, New York
:
ODILON MARTINEZ-ROJAS, :
AND SEVERIANO MARTINEZ-ROJAS, : January 4, 2019
Defendants : 3:24 PM
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE EDWARD R. KORMAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: **Richard Donoghue, Esq.**
United States Attorney

BY: **Margaret Lee, Esq.**
Taryn Merkl, Esq.
Assistant U.S. Attorney
271 Cadman Plaza East
Brooklyn, New York 11201

For Defendant
Odilon Martinez-Rojas: **Richard Rosenberg, Esq.**
217 Broadway
Suite 707
New York, NY 10007

Severiano Martinez-Rojas: **John Wallenstein, Esq.**
1100 Franklin Ave
Garden City, NY 11530

Transcription Service: **Transcriptions Plus II, Inc.**
61 Beatrice Avenue
West Islip, New York 11795
laFerrara44@gmail.com

Proceedings recorded by electronic sound-recording,
transcript produced by transcription service

Proceedings

1 THE CLERK: United States v. Odilon Martinez-
2 Rojas and Severiano Martinez-Rojas.

3 Your appearances, counsel.

4 MR. ROSENBERG: Yes. Good afternoon, your
5 Honor.

6 For Mr. Odilon Martinez-Rojas, Richard
7 Rosenberg.

8 MR. WALLENSTEIN: And for Severiano Martinez-
9 Rojas, John Wallenstein.

10 Good afternoon, your Honor.

11 THE COURT: I'm going to sentence them
12 separately, but Paula's called you together because
13 there's apparently a common issue.

14 MS. MERKL: Your Honor, that's the government's
15 understanding. Before we get into that, I will just note
16 the government's appearance, Taryn Merkl and Maggie Lee
17 for the United States. And the probation officers
18 present.

19 MS. SULLIVAN: Patricia Sullivan.

20 Good afternoon, your Honor.

21 MS. METTS: Miriam Metts.

22 MR. GJELAJ: Mark Gjelaaj.

23 Good afternoon, your Honor.

24 MS. MERKL: And your Honor, my understanding
25 based on discussions with counsel prior to proceeding is

Proceedings

1 that some of the guideline's calculations as to these two
2 defendants are the same because a lot of overlapping
3 conduct in which they were engaged involving the same
4 Jane Does.

5 There are some challenges, is my understanding,
6 to the vulnerable victim enhancement in particular but I
7 will, of course, let the defense attorneys speak for
8 themselves.

9 THE COURT: Okay.

10 MR. ROSENBERG: Yes.

11 THE CLERK: First things, Judge, the magistrate
12 took the plea for both of these defendants. As long as
13 it's okay with each of your clients, I am going to refer
14 to them by their first names.

15 MR. WALLENSTEIN: Fine, it makes it easier.

16 MR. ROSENBERG: That's fine.

17 THE CLERK: Okay. So Judge, for Odilon
18 Martinez-Rojas, the magistrate took the plea, and also
19 Severiano, as well --

20 THE COURT: Okay.

21 THE CLERK: -- the magistrate took the plea.

22 THE COURT: I would accept the plea based on my
23 reading of the plea minutes but for the same reasons as
24 I've asked the other lawyers, so I just want to be sure,
25 this is a complex case, particularly the sentencing, and

Proceedings

1 I want to be sure that -- first of all, the presentence
2 report, has that been translated?

3 MR. ROSENBERG: It has been, your Honor.

4 THE COURT: And you've gone over it with the
5 defendant?

6 MR. ROSENBERG: Yes, your Honor.

7 THE COURT: And before he pled, you went over
8 the manner in which the sentence would be calculated?

9 MR. ROSENBERG: Yes, your Honor.

10 THE COURT: And the guidelines?

11 MR. ROSENBERG: We went through -- the
12 agreement was translated into Spanish, and went through
13 the PSR, and we went through the sentencing calculations.

14 THE COURT: And --

15 MR. WALLENSTEIN: And your Honor, for
16 Severiano, the PSR was translated into Spanish for him.
17 In fact, so just so the record is completely clear, the
18 conduct portion of the PSR which encompassed all
19 defendants was translated and shared with all of my co-
20 counsel when that was done.

21 I reviewed the PSR with Severiano, with an
22 interpreter, and he has a copy of it in Spanish. The
23 same applies to the indictment and the plea agreement,
24 which were reviewed prior to the plea before the
25 magistrate.

Proceedings

1 THE COURT: And you've gone over with him
2 carefully, the manner in which the guidelines have been
3 calculated?

4 MR. WALLENSTEIN: Yes, sir.

5 THE COURT: And he understand what the maximum
6 sentence is?

7 MR. WALLENSTEIN: Yes, he does, and he
8 understands what the guidelines calculation is, and what
9 our objections to them are.

10 THE COURT: Okay. And that's the same --

11 MR. ROSENBERG: That's the same here, your
12 Honor.

13 THE COURT: Okay.

14 MR. ROSENBERG: It's understood.

15 THE COURT: Okay. So why don't you make your
16 objection?

17 MR. ROSENBERG: Your Honor, this is really
18 quite straightforward, as opposed to some of the previous
19 sentences that you heard.

20 The plea agreement contains a calculation that
21 includes a vulnerable victim enhancement for Jane Does 1,
22 4, and number 9. And we are aware of the government's
23 memorandum, and the statements of the victims that there
24 were allegations of abuse, and during the course of the
25 relationship, and during the course of offense.

Proceedings

1 However, there is nothing in the government's
2 proffer or in their sentencing memorandum that to me
3 indicates at least, that the McCall standard, the United
4 States v. McCall and the cases that follow, that there
5 was anything in particular about each of these victims
6 that made them particular susceptible to being recruited
7 or reduced, or targeted for this offense.

8 And I understand your Honor has ruled as to
9 Jane Doe number 6, however my client, Odilon, was not
10 charged with that in the plea agreement. I understand
11 that the probation department considered all the victims
12 vulnerable, and that I think from your Honor's previous
13 comments, you don't necessarily accept that blanket
14 characterization.

15 THE COURT: Right.

16 MR. ROSENBERG: So as to Odilon, in any event,
17 those three enhancements of vulnerable victim
18 enhancements for those three victims does bump up that
19 affect the grouping analysis. So what we come up -- and
20 I should add one thing, and I missed this originally, but
21 as to -- maybe I should just stick with Jane Does 1, 4
22 and 9, but Jane Doe 5 has a level 38 based on a minor --
23 a participant of a minor.

24 My client's -- I understand that's -- you don't
25 cut the tree and count the rings, it doesn't matter

Proceedings

1 whether or not a defendant knows the true age. However,
2 I just wanted to underscore that my client's role in
3 number 5 was limited to picking her up at the airport in
4 Atlanta when she arrived in Atlanta, and taking her to
5 another location.

6 THE COURT: Well, I thought we were dealing
7 with 1, 4, and 9.

8 MR. ROSENBERG: But I was just --

9 THE COURT: Don't jump around.

10 MR. ROSENBERG: -- it affects the guidelines,
11 but --

12 THE COURT: Let's --

13 MR. ROSENBERG: Anyway --

14 THE COURT: -- we're not -- we're just doing --

15 MR. ROSENBERG: -- let's just stick to the
16 vulnerable victims for the time line.

17 THE COURT: Yeah.

18 MR. ROSENBERG: So again, it's our position
19 that nothing put forward to make those victims vulnerable
20 and under the case law, to be initially recruited or
21 targeted to some particular vulnerability.

22 I think the case law is Sabatino, which
23 mentions that economic duress is not a characteristic
24 that would be considered under the law to make a person a
25 vulnerable victim. And the Mann Act is not -- as well is

Proceedings

1 not a character -- sufficient characterization to
2 establish vulnerability.

3 THE COURT: So let me hear from the --

4 MR. ROSENBERG: So it's for those reasons that
5 we --

6 THE COURT: Let me hear from the government on
7 1.

8 MS. MERKL: Okay. Your Honor, with regard to
9 Jane Doe 1, the government applied the vulnerable victim
10 enhancement because she was 19-years-old when the
11 defendant, Odilon Martinez-Rojas approached her to
12 recruit her.

13 And at the young age of 19, she was working in
14 a store that had three children to support, including a
15 child with medical problems. She told Mr. Martinez-Rojas
16 repeatedly that she didn't want to leave her family, that
17 she needed to earn money for her children, who -- at
18 least one of whom required significant medical attention,
19 and you know, Mr. Martinez-Rojas continued to pursue her.
20 She ultimately -- promising her a job at a restaurant
21 where she could make more money than she was making in
22 her then employment.

23 Upon being lured away from her situation, the
24 restaurant job did not materialize, and she was promptly
25 convinced to come to the United States, so that she could

Proceedings

1 earn enough money to care for her needy children.

2 So we do, your Honor, submit that as a 19-year-
3 old with three children to support, including one of whom
4 required substantial medical care, this defendant
5 targeted her specifically because she was desperate to
6 take care of her children, and he exploited that
7 vulnerability in, you know, inducing her or coercing her
8 to come to the United States under false pretenses.

9 I would note, your Honor, that this is the same
10 victim who was sent to work the very first day or the
11 second day after her arrival in the United States, and
12 had no idea why they took her to a place of -- to perform
13 service on clients, and she didn't understand the work.
14 She began crying.

15 The driver brought her back to Odilon to
16 address the situation and he beat her, raped her, held
17 her in captivity essentially, until she agreed to work.

18 So she was, you know, lured away under grossly
19 false pretenses due to her susceptibility as a result of
20 having some -- a more desperate economic circumstance
21 than usual. She was not merely a poor person trying to
22 find for herself, but a poor person who was trying to
23 take care of her three children with limited economic
24 opportunities where she was living at the time.

25 With regard to Jane Doe 4, your Honor, the

Proceedings

1 government applied the vulnerable victim enhancement in
2 that instance largely, your Honor, due to the fact that
3 it was --

4 THE COURT: Well, let's finish with 1, and then
5 we can go on.

6 MS. MERKL: I'm sorry.

7 THE COURT: Let's finish with 1.

8 MR. ROSENBERG: Well again, your Honor that --

9 THE COURT: The fact that she is 19, it seems
10 to me, she's already -- he's already getting -- the age
11 is already being factored, as I understand it.

12 MS. MERKL: Not with regard to this victim,
13 your Honor. Age is --

14 THE COURT: No, not with regard to this victim
15 in general, but I thought you -- I thought -- I don't
16 know. I maybe sentencing too many people at once. I
17 thought you said that age was a factor in one of these
18 calculations.

19 MS. MERKL: Only as to the minor's risk. Once
20 somebody reaches the age of 18, they're treated as an
21 adult --

22 THE COURT: Right.

23 MS. MERKL: -- for the purposes of sex
24 trafficking. So there's no enhancement other than the
25 vulnerable victim.

Proceedings

1 THE COURT: Right. So then you've emphasized
2 it -- that's what I thought but you've emphasized the 19.

3 MS. MERKL: Just because she's very young with
4 substantial weight on her shoulders, your Honor.

5 MR. ROSENBERG: Well again, your Honor, those
6 are factors that have been considered by our Circuit and
7 rejected in McCall and rejected in Sabatino, and in
8 United States v. Castaneda, 239 F.3d 978, (9th Cir.) case,
9 which is a Mann Act but it's -- Sabatino was a First
10 Circuit case.

11 You have the cases that I've cited in my memo,
12 and McCall, that -- look, the fact that she was young and
13 economically desperate lent itself to the crime itself.
14 That's already -- that's part of what he's charged with
15 in sex trafficking.

16 But I think it's a stretch to say that those
17 factors made her particularly vulnerable, more targeted
18 for those reasons, and I think that's contrary to what
19 the law in this circuit and other circuits states.

20 And Ms. Merkl mentioned the abuse that was
21 rendered her by my client as a further explanation for
22 vulnerability, but I think that's after the fact. We're
23 talking about what conduced her, and what made her
24 specifically, and particularly vulnerable to begin with.

25 MS. MERKL: Your Honor, we spent a lot of time

Proceedings

1 yesterday talking about vulnerability --

2 MR. ROSENBERG: Yes.

3 MS. MERKL: -- in general versus targeting, and
4 this victim was vulnerable. She had a tremendous amount
5 of weight on her shoulders for someone of such a young
6 age, and the government submits respectfully that that is
7 what's relevant, not whether this defendant targeted her
8 for that reason. Again, the targeting is not the
9 standard.

10 THE COURT: Well, according to the presentence
11 report, he offered her a job which she didn't immediately
12 accept, and it was somewhat about a year later that he
13 telephoned and asked her to be his girlfriend.

14 And it's not clear to me, when was the offer of
15 a job made?

16 MS. MERKL: Your Honor, my understanding based
17 on the extradition paperwork, and the plea agreement -- I
18 mean, and the PSR, excuse me, was that the restaurant job
19 offer came after he had been kind of telephoning her for
20 up to a year, in learning about her personal
21 circumstances and her desperate need for income.

22 MR. ROSENBERG: Well again, that's more in
23 terms of the crime itself of sex trafficking, and false
24 promises, which is part of the overarching offense of sex
25 trafficking. It's already been accounted for.

Proceedings

1 THE COURT: Well, the probation report says
2 that Jane Doe traveled to Pueblo to accept Odilon's offer
3 to work in the restaurant. And she arrived, he told her
4 that the restaurant was no longer in operation, and he
5 offered to bring her to the United States to make even
6 more money.

7 The government's argument is that she was
8 particular vulnerable because she had sick children who
9 needed medical treatment. It's not just that she was
10 poor.

11 MR. ROSENBERG: I don't think that economic
12 duress is necessarily standard for vulnerability, your
13 Honor. That's the Sabatino case at 943 F.2d 94, (1st
14 Cir. 1991).

15 MS. MERKL: Sabatino is clearly not on all
16 fours with this particular victim's circumstances, your
17 Honor.

18 THE COURT: I read McCall but I don't know --
19 where is Sabatino? I don't have that.

20 MR. ROSENBERG: What's the citation 943 F. 2d
21 94.

22 THE COURT: Can somebody -- can you get it for
23 me?

24 MR. ROSENBERG: I'm sorry, I don't have the
25 case with me, Judge.

Proceedings

1 THE COURT: Just get me the case.

2 Okay, let's go onto the next one, 4.

3 MS. MERKL: Your Honor, Jane Doe 4, the
4 application of Jane Doe 4 was also made due to her sort
5 of unusual personal circumstances. She was living in
6 Guatemala when she was targeted, and in an abusive
7 relationship, and sort of desperate to leave Guatemala.

8 And she was introduced to Odilon Martinez-
9 Rojas, who you know sort of promised to be her boyfriend,
10 and sort of rescue her from this abusive situation, and
11 help her leave her bad situation in Guatemala.

12 I would note, your Honor, that the Court in
13 Georgia did find vulnerable victim as to this defendant
14 in the underlying case. Mr. Martinez-Rojas is already
15 sentenced as to Jane Doe 4 in Georgia.

16 MR. WALLENSTEIN: But Severiano has not been.

17 MR. ROSENBERG: That's correct.

18 (Pause)

19 THE COURT: And did he know he was in this
20 abusive relationship?

21 MS. MERKL: Your Honor, the government
22 certainly believes that the evidence suggests that she
23 expressed her concerns to this defendant in order to get
24 out of her situation, and he offered to be her boyfriend
25 and rescue her from this terrible situation she was in.

Proceedings

1 MR. ROSENBERG: Well again, you know, that's
2 totally speculative, your Honor, as to what my client --

3 THE COURT: No, but the way the presentence
4 report is worded is that at the time that she met a
5 Mexican national individual in 2007, she told that the
6 individual she was involved in an abusive relationship
7 and she wanted to leave Guatemala and enter the United
8 States. And he provided Jane Doe information to contact
9 Odilon.

10 MS. MERKL: Your Honor, I would also note that
11 in contrast to Jane Doe 6, who was first subjected to the
12 prostitution work in Mexico, both of these women were
13 duped into coming to the United States under these
14 entirely false pretenses, and once here in the United
15 States and isolated from friends and family --

16 THE COURT: No, no, but what made them
17 particularly vulnerable.

18 MS. MERKL: All of those things --

19 THE COURT: No, what made -- the question that
20 I asked is did Odilon know that she was involved in an
21 abusive relationship.

22 MS. MERKL: Your Honor, that is the
23 government's understanding of the facts.

24 THE COURT: No, but that's your understanding
25 based on --

Proceedings

1 MS. MERKL: Based on the debriefings, and based
2 on her explanation of how she came to meet him. She was
3 introduced by this friend who knew she was in an abusive
4 relationship, and trying to get out of it. That's my
5 understanding but obviously, we can pull the reports and
6 take time to (indiscernible) down.

7 MR. ROSENBERG: Judge, I submit that's kind of
8 a low standard, the fact that she had bad relationship
9 going on in her life, and her --

10 MS. MERKL: But --

11 MR. ROSENBERG: And again, there's nothing
12 specific to show that my client knew that or that was the
13 main reason that she even agreed to be his girlfriend.

14 MS. MERKL: Your Honor, if I may just briefly
15 -- it is also significant, we believe, that these girls
16 were lured out of their home countries and then subjected
17 to this type of work because once isolated in a country
18 where they don't speak the language, and don't have any
19 money --

20 THE COURT: But according to this, she wanted
21 to.

22 MS. MERKL: She wanted to leave --

23 THE COURT: She wanted to leave --

24 MS. MERKL: -- but she didn't want to come here
25 to be a prostitute, your Honor.

Proceedings

1 THE COURT: No, I understand that. I'm just --

2 MS. MERKL: And once here, she is more
3 vulnerable than she would've been in a place where she
4 had a social network, a parent, or a friend, or a family
5 member to call. She had nobody to call when they brought
6 her to Georgia. She doesn't speak any English. She had
7 no money, no resources whatsoever. The defendant
8 essentially isolated these women from their social
9 network by bringing them into the United States under
10 false pretenses.

11 Once here, no knowledge that they were being
12 brought here to do prostitution-related work were very,
13 very vulnerable, because they were -- had no safety net,
14 and absolutely no resources available to them.

15 MR. ROSENBERG: This sounds more like
16 probation's approach, blanket approach to each of the
17 victims in this case. All of them were induced one way
18 or another.

19 THE COURT: No.

20 MS. MERKL: Your Honor, not all of them were
21 forced into prostitution once isolated and brought to the
22 U.S. Some of them were required to work in Mexico.
23 Those women were not -- they had their eyes a little bit
24 more open as to what was in store for them in the United
25 States.

Proceedings

1 I would note that as to Jane Doe 5 for example,
2 who ended up working in Mexico before coming here, the
3 government has not sought the vulnerable enhancement as
4 to her for any defendant.

5 THE COURT: Okay. So she was vulnerable, so
6 that I understand it. So she was vulnerable because she
7 was in the United States, and it was in the United States
8 that she was forced to engage in prostitution, and as a
9 consequence, she was vulnerable because there was nothing
10 -- there was no way for her to get out of it.

11 MS. MERKL: That's part of the government's
12 argument. We also believe the background circumstances
13 matter but the being here is significant, significant
14 break in her ability to get out.

15 MR. WALLENSTEIN: But Judge, my understanding
16 is that the government's argument initially was that this
17 was a vulnerable victim, and this applies to the others,
18 as well, at the time that she was targeted, and Severiano
19 had nothing to do with that. He doesn't come into the
20 picture until much later on.

21 But if their position is that she was targeted
22 because she was a vulnerable person, the creation of
23 vulnerability later is inapplicable, as I see it --

24 THE COURT: Well, I have to take --

25 MR. WALLENSTEIN: -- and isn't that really the

Proceedings

1 essence of the crime itself, and therefore built into the
2 base guideline, that you brought somebody here for the
3 purpose of isolating them and having them prostitute
4 themselves.

5 THE COURT: Well, I don't know --

6 MR. WALLENSTEIN: That's what sex trafficking
7 is all about.

8 MS. MERKL: I think there's a scale of
9 vulnerability.

10 THE COURT: What is the guidelines again?

11 MS. MERKL: 3A1.1, your Honor. And your Honor,
12 our argument is essentially the same as to 7 with regard
13 to her isolation and --

14 THE COURT: Just, I can't --

15 MS. MERKL: I understand.

16 THE COURT: I can't listen and read at the same
17 time. 3A, what did you say?

18 MS. MERKL: 1.1.

19 THE COURT: I don't see where that -- where you
20 get the argument under the note that she has to have been
21 targeted --

22 MR. WALLENSTEIN: My argument is that the --

23 THE COURT: -- initially.

24 MR. WALLENSTEIN: -- the government's argument
25 is that they were targeted because they were vulnerable,

Proceedings

1 that they exploited their vulnerability initially by
2 targeting a woman with young children, and a sick child,
3 a woman in an abusive relationship. That's the
4 government's argument. And what I'm saying is --

5 THE COURT: Right, the government has made
6 another argument.

7 MR. WALLENSTEIN: Well, that's the way I heard
8 their argument. Maybe I missed it.

9 THE COURT: Well --

10 MR. WALLENSTEIN: And I'm suggesting that if
11 that is the argument, that's one thing, and Mr. Rosenberg
12 has addressed this, but if that is their argument, then
13 the fact that they became vulnerable once they were here
14 is a separate argument, and I don't think it's applicable
15 here, and it's certainly not applicable for Severiano,
16 who doesn't even know about Jane Doe 4 until way down the
17 road, and then only for a short period of time.

18 MR. ROSENBERG: Again, your Honor, I think this
19 is -- the crime itself is the fact that the person was
20 induced for -- by pretenses, false pretenses, force to
21 otherwise, coercion, into engaging in prostitution
22 against their will, and there's nothing that I've heard
23 that makes this victim particularly vulnerable as an
24 individual to be beyond induced. Again, it's more akin
25 to the probation's approach that they're all vulnerable,

Proceedings

1 because they're all poor, and they're all in desperate
2 situations, and your Honor has already rejected that and
3 I think the case law supports your Honor's view of that.

4 Probation says if we're not protecting a group
5 of young, poor, uneducated women from an impoverished
6 area of Mexico, who are we going to protect? But that's
7 their generalization, and --

8 MS. MERKL: And that is not the government's
9 generalization, your Honor.

10 MR. ROSENBERG: That's what it comes down to
11 though.

12 MS. MERKL: Most respectfully, it does not come
13 down to that.

14 THE COURT: Well the government's argument is
15 that first of all, she was vulnerable because of the
16 abusive relationship, and separate and apart from that,
17 once she got to the United States, and before she had
18 engaged in forced -- in commercial prostitution, she was
19 in a position where she had no choice.

20 MR. WALLENSTEIN: Isn't that true though --

21 THE COURT: I mean, I had an analogous case,
22 although it didn't involve this particular crime but it
23 involved a defendant who lured women to an isolated
24 suburb of New York, I think it was Pound Ridge, and under
25 circumstances where they had no money, and no means of

Proceedings

1 leaving even though he told them that they were free to
2 leave, and my own view is that they were sort of
3 psychological prisoners and I don't know that I was -- I
4 took that into account in determining the sentence in
5 this -- the case was United States v. Yannai, and it
6 seems to me this is a comparable situation where she's
7 vulnerable because of the fact that she was, for all
8 practical purposes, in a position where she wasn't free
9 to leave.

10 MR. WALLENSTEIN: But isn't that --

11 THE COURT: Even if -- I mean in that case, he
12 told these women that they could go. It's just the
13 question is where would they go, and that was the
14 problem.

15 MR. WALLENSTEIN: But isn't that the essence of
16 the crime itself? And maybe I am reading this wrong, but
17 it seems to me that the vulnerable victim enhancement is
18 designed to be a comparison of this particular victim
19 versus other victims of the same crime --

20 THE COURT: Right.

21 MR. WALLENSTEIN: -- in a different situation,
22 and I think that probation's position certain is that
23 every woman whose sex traffic --

24 THE COURT: I know, we've been through it. I
25 don't --

Proceedings

1 MR. WALLENSTEIN: -- is vulnerable.

2 THE COURT: I don't agree with it. I said why
3 I didn't agree with probation.

4 MR. WALLENSTEIN: I agree with your not
5 agreeing, but I just think that the comparison issue
6 eliminates the vulnerable victim enhancement in a number
7 of these women. They are no more vulnerable than any
8 other victim of sex trafficking. And I'm not condoning
9 that or anything else. I'm just saying if you take all
10 the victims of sex trafficking, they're not very
11 different.

12 THE COURT: Where is commercial sex trafficking
13 defined?

14 MS. MERKL: Your Honor, commercial sex act is
15 defined as an exchanged act for anything of pecuniary
16 value. It's within 1591 itself.

17 THE COURT: Right.

18 MS. MERKL: Your Honor, commercial sex is
19 defined in 1591(e), "Any sex act on account of which
20 anything of value is given to or received by any person."

21 MS. MERKL: Your Honor, if I may, there is a
22 case -- I just wanted to bring to the Court's attention,
23 United States v. Monsal, 342 F.App 451 out of the 11th
24 Circuit in 2009, where vulnerable because like victims
25 that were specifically identified here, they were

Proceedings

1 susceptible to criminal conduct for income, spoke no
2 English, had no family in the United States, or place to
3 live other than what the defendant was providing which
4 made them, you know, unduly susceptible to being
5 pressured into the criminal conduct at issue.

6 So it's just further support for the
7 government's position that it's the isolation by bringing
8 them here with no clue what they're getting themselves
9 into that pushes them even farther down the scale of
10 vulnerability from where they already began when they
11 were targeted.

12 THE COURT: And did he pay her anything?

13 MS. MERKL: Your Honor, the Jane Does in this
14 case all relay that the defendants took basically all of
15 their earnings, and would even search them for any money
16 that they were trying to conceal. At times, certain of
17 the defendants, I would have to double-check as to the
18 specific Jane Does, and these defendants would count the
19 condoms to make sure that they weren't withholding any
20 proceeds from any specific John and giving them basically
21 no ways to support themselves, other than their
22 dependency on the defendant.

23 THE COURT: Okay. So it would satisfy this
24 definition if the money was -- if they gave him money.

25 MS. MERKL: I'm sorry, I couldn't hear.

Proceedings

1 THE COURT: I say the definition would be
2 satisfied if the victims gave him money for what they
3 earned.

4 MS. MERKL: That would be the financially
5 benefitting prong of sex trafficking but the commercial
6 sex act is complete the minute the money is exchanged for
7 a sex act.

8 THE COURT: So it doesn't matter whether it was
9 the defendant who gave the money.

10 MS. MERKL: It doesn't matter whether the
11 defendant received the money. If the defendant harbored,
12 transported, enticed, recruited, obtained, or maintained
13 that girl, the theory of prosecution here, your Honor, is
14 based on the provision and obtaining of the girls, not
15 the financial benefit prong, although they did that, too.

16 THE COURT: No, I am just trying to deal with
17 the definition of what -- their argument is that this is
18 all -- and this conduct is all encompassed within the
19 general umbrella of engaging in commercial sex activity,
20 and I just wanted to know what the definition was of that
21 particular offense, so I know whether it's within the
22 umbrella.

23 MS. MERKL: Well, your Honor, I think that I
24 understood the argument to be, you know, obtaining an
25 enticing the girls, you know that the holding of them

Proceedings

1 essentially would be contained within the action verbs,
2 if you will, of 1591(a).

3 It's the government's position though that
4 that's part of it certainly. You know, isolation is a
5 common tactic employed by sex traffickers, but that even
6 within the realm of victims, these victims who were in
7 sort of economic desperation situations, and then
8 completely ripped away from any social network, and their
9 home country, and completed isolated in a foreign land,
10 and then required to work in this industry, are more
11 vulnerable than women who could have perhaps gotten away
12 in their home country, spoken to the police in their
13 local language.

14 You know, we didn't make this argument as to
15 every single Jane Doe in this case. We looked at each
16 female individually, and analyzed what happened to her,
17 and what the defendants knew about it when based on their
18 levels of interaction with those girls, and women.

19 THE COURT: All right. I'm persuaded by that
20 argument. So let's go on. What is the next?

21 MR. ROSENBERG: So it's that you're holding it
22 vulnerable --

23 MR. WALLENSTEIN: For which one, we're talking
24 about number 4 now?

25 THE COURT: Number 4.

Proceedings

1 MR. ROSENBERG: Number 4. We still have number
2 1.

3 THE COURT: Well, we have to come back to
4 number 1. Let's do 9. What is it --

5 MR. ROSENBERG: 9?

6 THE COURT: Is that the third one that you're
7 talking about? Yeah.

8 MS. MERKL: Your Honor, that was to 1 and 4, or
9 all three?

10 MR. ROSENBERG: Not to 1, just to 4.

11 THE COURT: I haven't dealt with 1 yet.

12 MS. MERKL: Just 4.

13 THE COURT: I have to look at the case that he
14 cited.

15 MS. MERKL: Your Honor, Jane Doe 9 is similarly
16 situated to Jane Doe 7 in that Odilon met her when she
17 was approximately 20, convinced her that they were in a
18 real relationship, and brought her across the border to
19 Georgia under the auspices of gaining -- I'm just trying
20 to read paragraph 30 of the PSR.

21 THE COURT: I thought it was paragraph 29. If
22 I've got the wrong -- oh, I am looking at Odilon's -- I'm
23 sorry.

24 MS. MERKL: Oh, am I sorry, am I looking at --
25 I'm looking at Severiano's. Yes, sir. My apologies,

Proceedings

1 your Honor.

2 Turning to Odilon's PSR, I think it's the same
3 paragraph, just a different number, your Honor, but so as
4 to make the record clear --

5 THE COURT: It's 29 in Odilon's.

6 MS. MERKL: Thank you, your Honor.

7 MR. WALLENSTEIN: And it's 30 in Severiano's,
8 but it's the same verbiage.

9 MS. MERKL: Yes.

10 THE COURT: Okay.

11 MS. MERKL: Similar to Jane Doe 7, Odilon
12 brought her to the United States under false pretenses,
13 and required her to start work shortly thereafter, and
14 again in the circumstances where she had absolutely no
15 way of escape. She was in the United States illegally.
16 He knew it. She knew it, and had no means of access to
17 law enforcement, family members, any financial means of
18 support.

19 MR. ROSENBERG: We make the same arguments that
20 we did for number 4, your Honor. And she arrived in the
21 United States based on promises that he made to her to
22 induce her to come here, false promises, and I think it's
23 all subsumed.

24 MS. MERKL: And I would just like to briefly
25 read excerpts of the affidavit's extradition prepared by

Proceedings

1 Jane Doe 9. After she was brought to the United States
2 illegally, they spoke on the phone, and then this is
3 where I am going to start to read -- this is from
4 paragraph 5 of the English-language translation of the
5 extradition affidavit made under oath by Jane Doe 9.

6 "When I called him, he told me I was going to
7 work as a prostitute. When I told him no, he told me
8 that I had to because I was in the United States
9 illegally, and would not be able to find any other kind
10 of work. I was confused, and did not know what to do. I
11 was by my -- it was my first time in the United States.
12 I did not speak English, and I had no friends or family
13 nearby. After this conversation, I refused to speak to
14 him for a week. When I finally talked to him, he told me
15 again that I had to work as a prostitute, and that I had
16 to send all of the money that I made from working as a
17 prostitute to him in Mexico."

18 She then goes onto explain how a female co-
19 conspirator/victim frankly, taught her how to work.

20 MR. ROSENBERG: And being an illegal alien
21 would certainly cover millions of people of this country,
22 your Honor, and that would not make each and every one of
23 them a vulnerable victim. What is particularly --
24 particular about this victim number 9, other than the
25 fact that she was here illegally, and didn't have a job?

Proceedings

1 I mean, that's a description of literally millions of
2 people in this country.

3 MS. MERKL: But those individuals, your Honor,
4 often have made the choice in their own free will to come
5 to the United States to seek employment of their
6 choosing, as opposed to being under the control of
7 members of a sex trafficking organization, who are
8 telling her that she has no choice, and the implicit
9 threat there is that she will have no where to live, and
10 no way to eat if she does not comply, after being lured
11 here by them, as opposed to making an affirmative choice
12 of her own.

13 THE COURT: Well, find the vulnerable victim
14 enhancement here as well. So then we have to go back
15 to --

16 MR. ROSENBERG: Number 1.

17 THE COURT: Number 1.

18 MS. MERKL: Your Honor, as to Jane Doe 1, this
19 is the one who was in the dire economic circumstance with
20 three children who needed medical care.

21 THE COURT: I know. I know. I just want to
22 read the case that's been cited but I don't have my
23 reading glasses.

24 (Pause)

25 THE COURT: Ms. Merkl, did you want to see the

Proceedings

1 case that he's relying on?

2 MS. MERKL: This is Sabatino, your Honor? I'm
3 reading it on my phone.

4 THE COURT: Oh, okay.

5 MS. MERKL: It's very tiny.

6 THE COURT: I know, that's why I --

7 MR. ROSENBERG: Get a bigger phone.

8 (Pause)

9 THE COURT: Okay.

10 MS. MERKL: Your Honor, having taken a moment
11 to refresh on the Sabatino case, the government's
12 position remains that this case is simply not on all
13 fours with the victims here. The Sabatino situation seem
14 to be preying upon young women and -- who were American,
15 and were in a place where they lived presumably, and the
16 vulnerabilities that were relied upon were the age -- a
17 couple of the prostitutes were 18, a couple of them had
18 small children, and some of them were out of work. And
19 the Court in Sabatino decided that that was insufficient
20 in its totality to render them unusually vulnerability
21 from a different -- types of women and girls who find
22 themselves in a prostitution situation.

23 So your Honor, we have all of those factors, in
24 addition to more factors; the, you know, victims'
25 isolation.

Proceedings

1 THE COURT: Well, all of those factors that
2 were found inadequate.

3 MS. MERKL: Right. We have more.

4 THE COURT: Yes, okay.

5 MS. MERKL: That's what I am saying. We have
6 victims who were brought to a foreign country under false
7 pretenses, and then held in this situation where they had
8 no option but to do the work, and nowhere to turn. They
9 knew they were here illegally. They reminded by the
10 traffickers that they were here illegally, and couldn't
11 get any other type of employment as a consequence, who
12 had no opportunity to earn money in any other way under
13 the circumstances presented to them, and that is in stark
14 contrast from the women in Sabatino who appeared to be
15 domestic victims.

16 MR. ROSENBERG: Respectfully, I don't think
17 that the locale or the -- where these ladies came from is
18 a tipping point in the government's favor, your Honor.
19 These women may have been told certain things that were
20 or were not true, as far as their ability to get other
21 work, but again, I may liken them to illegal aliens who
22 were here in have trouble finding work because they're
23 illegal, and I don't think that that should be tipping
24 point that pushes the Sabatino characteristics over to
25 the government's side.

Proceedings

1 MS. MERKL: Your Honor, at risk of repeating
2 myself, they did not come here of their own volition,
3 under correct pretenses. That's not -- they didn't come
4 here to be prostitutes. They came here for a better
5 life.

6 THE COURT: No, I understand that but that's
7 not what makes them vulnerable.

8 MS. MERKL: No, that's what distinguishes them
9 from being just a regular, illegal alien, that's all.

10 THE COURT: I'm going to keep the vulnerable
11 for this one, as well. I agree that it's distinguishable
12 from Sabatino because of the fact that they were not --
13 not because of the fact that they --

14 MR. ROSENBERG: I'm sorry, your Honor, you're
15 finding vulnerability as to 1 --

16 THE COURT: Yes, because of the reasons given
17 by Ms. Merkl. It goes beyond -- they were here under
18 circumstances which made them particularly vulnerable.

19 MR. ROSENBERG: Well, those are the three --

20 THE COURT: Yeah.

21 MR. WALLENSTEIN: And, Judge, with respect to
22 those, I think that Severiano's in a different position
23 that --

24 THE COURT: Which one are you --

25 MR. WALLENSTEIN: As to --

Proceedings

1 THE COURT: Are we talking about the same ones?

2 MR. WALLENSTEIN: Yes, as to 1, 4, and 9,
3 Severiano's in a different position than Odilon because
4 Odilon was the one who did the enticing, if you will, and
5 the one who brought the victims here. Severiano comes
6 into the picture much later on, when they are brought to
7 him in Alabama, at least as far as number 9 and number 1
8 are concerned, I believe that's correct. So --

9 THE COURT: Is his worded the same way as to
10 Jane Doe number 1, his presentence report?

11 MR. WALLENSTEIN: The presentence report is
12 identical --

13 THE COURT: Okay.

14 MR. WALLENSTEIN: -- with respect to the
15 wording, but his conduct is different than his brother's,
16 and I think it's difficult, if not impossible to
17 establish that he was aware of their status of, or their
18 vulnerability prior to him encountering them, which is
19 later on down the road.

20 MS. MERKL: Your Honor, given the close
21 collaboration and partnership of these men, including the
22 evidence suggesting that they had regular conversations
23 about which victims earn more money, and which victims
24 were worthwhile, the government's position is that
25 reasonable inferences can be drawn to conclude that

Proceedings

1 Severiano, of course, knew that Jane Doe 1 was, you know,
2 vulnerable, for example, when she was deposited to him in
3 his trailer, and expected to work in isolated conditions
4 in the middle of nowhere in Alabama.

5 Similarly, your Honor, as to Jane Doe 4, the
6 defendant clear --

7 THE COURT: So his actions with respect to Jane
8 Doe 1 were driving her to the border?

9 MS. MERKL: Your Honor, with respect to --

10 THE COURT: Driving her and others to the
11 airport in Mexico City, where he gave airport tickets.
12 I'm looking at the bottom of page 8 of Odilon.

13 MS. MERKL: As to Jane Doe 1, your Honor,
14 Severiano both facilitated with her transportation across
15 the border before she was victimized here in the United
16 States, and forced to begin work, and then later on,
17 after Mr. Severiano was in the United States and running
18 a brothel trailer, he was -- Jane Doe 1 was brought to
19 him to work in his trailer. This is all in same
20 paragraph, your Honor.

21 And he also sexually assaulted her while she
22 was working in his trailer.

23 THE COURT: Who is "he"?

24 MS. MERKL: Severiano. So he saw her before
25 and during her work in commercial sex.

Proceedings

1 THE COURT: I don't see how that's different.
2 Maybe if we just stopped at the first part, that he just
3 drove her to the airport and gave her tickets, but he was
4 there. He provided, according to -- I'm just reading
5 this out of context -- during that time -- now I am
6 getting confused by the names -- during that time,
7 Severiano Martinez-Rojas raped Jane Doe 1 on two
8 occasions, and he prostituted her, Martinez-Rojas, at a
9 trailer that he operated as a brothel in Alabama.

10 MR. WALLENSTEIN: That's what it says.

11 THE COURT: Yeah, but then I don't see how it's
12 any different.

13 MS. MERKL: Your Honor, and as to the
14 inducement to leave, and the arrangements to leave, there
15 is additional information contained within Jane Doe's
16 extradition affidavit should the Court care to read it.

17 THE COURT: Yes.

18 MS. MERKL: Your Honor, I will hand that up.

19 THE COURT: Why don't you just read it into the
20 record, unless it's long, otherwise, I'll read it.

21 MS. MERKL: Specifically, your Honor, Jane Doe
22 1 explained that Odilon and his brother, Severiano
23 Martinez-Rojas, would come to the restaurant -- come to
24 her place of employment during the recruitment process
25 but then moving onto paragraph 5 in the extradition

Proceedings

1 affidavit, she explained, "Odilon took me to the town of
2 Tenansingo (ph.), where he and his family lived. After
3 several days, he left for the United States. Before he
4 left, he told me that Severiano would take care of me. I
5 asked Severiano if he could take me to his wife's
6 employment, so that I could work and earn money. He told
7 me that I needed to rest because I was going to work and
8 earn a lot of money in the United States."

9 THE COURT: Okay.

10 MS. MERKL: She then describes how he took her
11 to the border. And I submit, your Honor, that Severiano
12 knew exactly what was in store for Jane Doe when she was
13 arriving -- Jane Doe 1, when she was coming to the United
14 States because of his prior involvement with his family
15 business.

16 THE COURT: Well, he was also involved in it
17 when she was in the United States.

18 MS. MERKL: Exactly.

19 THE COURT: Okay. What's the next --

20 MR. WALLENSTEIN: Number 3, I believe. I'm
21 sorry, number 3 does not have the vulnerable victim
22 enhancement.

23 Number 6, which you applied to --

24 MS. MERKL: Your Honor, just to be clear, Jane
25 Doe 3 does have a vulnerable victim enhancement in the

Proceedings

1 PSR but this is one of the Jane Doe victims, as to whom
2 the government is not taking the position that she was
3 uniquely vulnerable.

4 So if the PSR needs to be amended, we need to
5 do that. That's in paragraph 80 of Severiano's PSR.

6 MR. WALLENSTEIN: I agree the PSR needs to be
7 amended if it shouldn't apply.

8 THE COURT: Okay. Does that change your
9 guidelines calculation?

10 MR. GJELAJ: We have one error that we need to
11 acknowledge that is going to change the guidelines
12 calculation with (indiscernible) --

13 THE COURT: I'm just suing -- let me just get
14 the --

15 MR. GJELAJ: Not with respect to Severiano, but
16 Odilon.

17 THE COURT: Well, let's not jump around.

18 MR. GJELAJ: Okay.

19 THE COURT: I'm just asking whether this --

20 MR. GJELAJ: Whether this, taking away the
21 vulnerable victim with respect to which Jane Doe?

22 THE COURT: Yeah, reflect --

23 MS. MERKL: Number 3.

24 THE COURT: Does that reflect -- does that
25 alter your guidelines calculation?

Proceedings

1 MS. MERKL: I don't think it actually would
2 affect the grouping, your Honor, but we'd have to get
3 there to know.

4 MR. ROSENBERG: It does for Odilon though, but
5 we'll get back to him.

6 (Pause)

7 MR. GJELAJ: No, your Honor, that in of itself
8 does not change the guidelines.

9 THE COURT: So --

10 MR. GJELAJ: It does not change the guidelines.

11 THE COURT: So Severiano's remains the same.

12 MR. GJELAJ: Severiano's remains the same.

13 THE COURT: Okay. And that's 235 to 293? I'm
14 sorry.

15 MR. GJELAJ: Yes.

16 THE COURT: Okay. Now you said there's one in
17 Odilon's that has to be changed?

18 MR. GJELAJ: Yeah.

19 THE COURT: Go ahead.

20 MR. GJELAJ: Paragraph 78 -- I'm sorry, 79.

21 Consistent with your Honor's ruling yesterday, and
22 consistent with all of the other PSRs, the count of
23 conviction here is nto a 1591. So this would go over to
24 guidelines 2A3.1.

25 THE COURT: What paragraph are you on now?

Proceedings

1 MR. GJELAJ: 79.

2 THE COURT: Yeah.

3 MR. WALLENSTEIN: I have it as paragraph 80 for
4 the vulnerable victim enhancement.

5 MS. MERKL: We're (indiscernible) about
6 Severiano.

7 MR. WALLENSTEIN: I'm sorry.

8 MR. GJELAJ: No, we're not -- yeah. I will get
9 to that in a moment. And so the cross reference will
10 take you to 2A3.1, which it has in the other counts, and
11 that will be a base offense level of 30.

12 And the only other associate that applies is
13 the plus 4, since it's conduct in 2241, and that's a plus
14 4.

15 THE COURT: Where is a plus 4?

16 MR. GJELAJ: Plus 4 should be at paragraph 80.

17 THE COURT: So it's going --

18 MR. GJELAJ: If you go -- if --

19 THE COURT: -- from a plus 2 to a plus 4?

20 MR. GJELAJ: So it's a 30 base offense level,
21 and then plus 4 at 2A3.1(b)(1).

22 THE COURT: And so that raises the adjusted
23 offense level?

24 MR. GJELAJ: No, that actually lowers it.

25 THE COURT: I don't know. I am lost.

Proceedings

1 MR. GJELAJ: So the adjusted offense level for
2 that count, Judge, for Jane Doe 5, is a level -- well, in
3 the addendum it turns -- it's amended to be a level 40.
4 It's now a level 34.

5 THE COURT: So paragraph -- according to you,
6 paragraph 85 is 34?

7 MR. GJELAJ: Paragraph 85 should be a 34.

8 MS. MERKL: Correct.

9 THE COURT: Okay, I see that. And how does
10 that affect the overall guidelines?

11 MR. GJELAJ: Yes, thank you, your Honor. So
12 rather than the 40 -- if you received the addendum, your
13 Honor, it's easier to work off of that, because there was
14 a mathematical error in the presentence report that was
15 corrected in the addendum.

16 THE COURT: I don't see -- let me just get the
17 addendum. Do you all have the addendum?

18 MR. WALLENSTEIN: I have that.

19 (Pause)

20 THE COURT: Why don't you go ahead and explain
21 it to everybody?

22 MR. GJELAJ: I have a copy, Judge.

23 THE CLERK: Paula, he's written this all out.

24 MR. GJELAJ: So let me explain where the
25 probation department is right now.

Proceedings

1 (Pause)

2 MR. GJELAJ: Now again this --

3 (Pause)

4 MS. MERKL: Your Honor, there is one additional
5 issue with regard to the --

6 THE COURT: Let's --

7 MS. MERKL: -- base offense level for Jane Doe
8 1, that will affect the overall calculation. Okay.

9 THE COURT: Okay.

10 MS. MERKL: So I just -- I don't want to do
11 things out of order but at the same time, I'm not sure
12 it's worthwhile to do all of the grouping analysis until
13 we have figured out the individual predicate acts.

14 THE COURT: Okay.

15 MS. MERKL: So as to Jane Doe 1, your Honor, we
16 have addressed the vulnerable victim issue, but as set
17 forth in the government's sentencing submission at page
18 48, and as included in our plea agreement estimate as to
19 both defendants, we believe that the serious bodily
20 injury enhancement should apply for Jane Doe 1.

21 Jane Doe 1's physical circumstances were above
22 and beyond some of the physical abuse that the other
23 victim suffered, in no way suggesting that those are not
24 significant injuries, but as to the serious bodily injury
25 of lasting damage to her person, Mr. Martinez-Rojas

Proceedings

1 required her to get a large tattoo against her will, and
2 tattooing is itself very painful, and a permanent scar to
3 the body.

4 THE COURT: I'm sorry, where is this in the
5 presentence report?

6 MS. MERKL: I'm not sure it's in the
7 presentence report, your Honor.

8 MR. WALLENSTEIN: It's not in your memo either.

9 MS. MERKL: It is in our memo. It's on page 48
10 of our memo. He required her to get a large tattoo, your
11 Honor, and that --

12 THE COURT: A large what?

13 MS. MERKL: Tattoo of --

14 THE COURT: Tattoo.

15 MS. MERKL: -- a saint that he admires. It's
16 like an image of Santa Muerta, which is, you know, death
17 wearing like a wedding dress. Apparently this particular
18 defendant had a fascination with that particular saint,
19 and required that -- Jane Doe 1 to get a large tattoo of
20 it on her body. That itself was painful. Getting it
21 removed after it was photographed by agents, after she
22 was recovered from her trafficking situation, was
23 likewise very painful.

24 And that bodily injury, your Honor, we submit
25 you know supports that two-level upward adjustment. So

Proceedings

1 it's our position that the applicable guidelines for Jane
2 Doe 1 is 38, not 36, which is I believe where the
3 probation department was starting our analysis. That's
4 the reason for the interruption.

5 THE COURT: So getting a tattoo is a serious
6 physical injury.

7 MS. MERKL: Against your will, your Honor.
8 It's a scar.

9 THE COURT: Is that -- against --

10 MS. MERKL: It's a permanent scar, and it's
11 extremely painful.

12 THE COURT: I know, but there are many people
13 who would have tattoos all over their body.

14 MS. MERKL: And they could probably all tell
15 you it's painful.

16 THE CLERK: I will tell you it's painful.

17 MS. MERKL: And your Honor, when it's against
18 your will, it's a form of punishment that permanently
19 disfigures your body, and that fits well within the
20 definition of serious bodily injury as to the guidelines.

21 THE COURT: Where was the tattoo?

22 MS. MERKL: On her -- where was it on her body?
23 I would have to double-check the reports, your Honor. I
24 have them in the courtroom if that's important.

25 THE COURT: I'm just curious, where was it?

Proceedings

1 MS. MERKL: I'm not certain where on the body
2 it was. By the time I had met Jane Doe 1, your Honor,
3 she had had the tattoo removed. The agents in Oklahoma
4 or Texas had photographed the tattoo prior to my meeting
5 her, but I personally have not seen the photographs.

6 MR. WALLENSTEIN: Are you suggesting that
7 applies to Severiano, as well, that enhancement?

8 MS. MERKL: She suffered it during her -- it's
9 during the offense, it's not as to the defendant, is the
10 government's position.

11 THE COURT: What page in your memo?

12 MS. MERKL: Page 48, your Honor.

13 THE COURT: Where is the serious bodily injury
14 defined in the guidelines?

15 MS. MERKL: 1B1.1, your Honor.

16 THE COURT: Okay.

17 (Pause)

18 THE CLERK: Go ahead.

19 MS. MERKL: Page 26 of the PSR is the
20 adjustments applicable to Jane Doe 1 in Odilon Martinez-
21 Rojas' PSR, your Honor, and it is the government's
22 position that 2 points should be added for serious bodily
23 injury bringing that total adjusted offense level for
24 Racketeering Act 3(a) to a 38.

25 THE COURT: Look, I'm -- it may indeed involve

Proceedings

1 physical pain, but I have no basis for taking judicial
2 notice of the fact that it involves extreme physical
3 pain.

4 MS. MERKL: Your Honor, it's permanent
5 disfigurement. She's permanently disfigured against her
6 will by having a needle shoved into her body hundreds of
7 times. That's what a tattoo is, with all respect.

8 THE COURT: Well, tell me where it fits in the
9 definition.

10 MS. MERKL: Your Honor, I believe that it fits
11 under application note 1M, where she had an injury
12 involving extreme pain that later required surgery to
13 have it removed. She needed to have laser surgery, I
14 believe more than once to get the tattoo ink out of her
15 skin.

16 I've had victims in cases similar, your Honor,
17 who have had surgery multiple times to remove all of the
18 ink.

19 (Pause)

20 THE COURT: Well, it reads -- I don't -- it
21 seems to me that what requires the intervention of
22 surgery, hospitalization, or physical rehabilitation, is
23 the impairment of a function of a bodily member organ or
24 mental faculty.

25 MS. MERKL: Your Honor, it says "or" after the

Proceedings

1 semicolon. Serious bodily injury means one of those
2 things, or an injury requiring medical intervention such
3 as surgery, hospitalization, and physical rehabilitation.

4 I believe that the means injury applies to
5 involving, and then the requiring after all -- the or
6 following the semicolon. The --

7 MR. ROSENBERG: It was required. It was at
8 that point, it was an optional surgery.

9 MS. MERKL: She could bear the permanent mark
10 of being trafficked for her lifetime, or she could get
11 the medical intervention necessary to cure the injury,
12 your Honor. She chose the latter.

13 MR. ROSENBERG: It was certainly not a life
14 threatening injury, Judge, nor one that was --

15 THE COURT: It doesn't require life
16 threatening.

17 MR. ROSENBERG: -- that interfered with a
18 bodily function.

19 MS. MERKL: That's why we're not seeking four
20 points, your Honor. We're seeking two. I'm not saying
21 it was permanent or life threatening, we're saying it was
22 serious. And anybody who has had a tattoo or seen
23 somebody get a tattoo can tell you it is essentially the
24 imposition of a giant scab on the body by repeatedly
25 hitting yourself with a needle, and that to remove such

Proceedings

1 tattoo requires laser surgery, which is also expensive.

2 THE COURT: I don't know about the whole
3 business about tattoos except that you see people with
4 tattoos, particularly athletes where you can see their
5 arms, full of tattoos, and I mean there's no way to --
6 and they're all putting themselves through this extreme
7 physical pain?

8 MS. MERKL: Yes. Yes, your Honor. It's very
9 painful.

10 THE COURT: What about the next sentence, with
11 in addition, serious bodily injury is deemed to have
12 occurred.

13 MS. MERKL: Your Honor, that --

14 MR. GJELAJ: That's precluded, your Honor,
15 since --

16 MS. MERKL: That's precluded by the cross -- by
17 the actual underlying guidelines about sex trafficking,
18 commercial sexual abuse. I think Mr. Gjelaaj was saying
19 the same thing. I'm sorry, I cut you off.

20 MR. GJELAJ: No, that's quite all right.

21 (Pause)

22 THE COURT: So if I set aside the extreme
23 physical pain, you would say this is an injury, and I
24 read it now as I see you would read it, that this was an
25 injury requiring medical intervention, such as surgery,

Proceedings

1 hospitalization, or physical rehabilitation.

2 MS. MERKL: Yes, your Honor. We think that
3 both of those prongs apply.

4 MR. WALLENSTEIN: Again, it didn't require it,
5 it was optional.

6 MS. MERKL: Or she could be branded for life
7 with a tattoo she didn't want to remind her of her
8 trafficker.

9 THE COURT: And did she give an affidavit or a
10 statement about extreme physical pain?

11 MS. MERKL: Your Honor, I do not believe that
12 the discussion of the tattoo was included in her
13 extradition affidavit as it was not relevant to the
14 elements of the offense that we set forth in the Mexican
15 government. So I just checked her extradition affidavit.
16 She does not discuss it there but she did describe it at
17 length in her debriefings, and was originally -- the
18 tattoo was photographed before it was removed.

19 THE COURT: Do you have the photograph?

20 MS. MERKL: I don't have the photograph with
21 me.

22 THE COURT: And what affect does this have on
23 the guidelines?

24 MS. LEE: I'm sorry?

25 THE COURT: What affect does this have on the

Proceedings

1 guidelines.

2 MR. GJELAJ: It would be the highest adjusted
3 offense level, your Honor. So this would be the offense
4 level we would work off of. It's a level --

5 THE COURT: No, I know, but what is the -- in
6 actual numbers?

7 MR. GJELAJ: It would be two levels, and we
8 would be looking at an ultimate guidelines level of -- so
9 with this enhancement, your Honor, it would be a level
10 38. That's the total offense level, 38, with a
11 guidelines range of 230- --

12 MS. MERKL: No.

13 (Pause)

14 MR. GJELAJ: With the enhancement, it would be
15 a total offense level of 38, 235 to 293. Without this
16 enhancement, it would be a level 36, at 188 to 235.

17 THE COURT: So tell me again what it is.

18 MR. GJELAJ: With the enhancement it's a level
19 38, 235 to 293. Without this enhancement, it would be
20 188 -- sorry, level 36, 188 to 235.

21 (Pause)

22 THE COURT: And how does this interact with
23 subdivision (K), which talks about an obvious
24 disfigurement that is likely to be permanent?

25 MS. MERKL: Your Honor, under the 2A3.1

Proceedings

1 guidelines, the permanent bodily injury enhancement is a
2 four-level enhancement, where a serious bodily injury is
3 a two-level enhancement. The degree of injury between
4 those two things is a three-level enhancement.

5 Although we do note that the obvious
6 disfigurement likely to be permanent does accurately
7 describe an unwelcome tattoo. There is a strong item for
8 the four, but we estimated two in the plea agreement for
9 a total estimate of 38, on this predicate as to this
10 victim, and so you know, we're not going to argue for
11 more than we estimated in the plea agreement.

12 (Pause)

13 MS. MERKL: Your Honor, if it's of interest,
14 the agents in the back were able to obtain a picture of
15 the tattoo. It appears to be on the one shoulder. It's
16 multi-colored. It seems to be of a decent size. If her
17 shoulder is average size, I would say it's at least four
18 to five, if not six inches tall.

19 (Pause)

20 THE COURT: I will do it under extreme physical
21 pain on the condition that you provide me, before I enter
22 the judgment with evidence of that because I'm not
23 prepared to take judicial notice of it, and it all
24 depends on what pain she suffered. People tolerate pain
25 differently.

Proceedings

1 MS. MERKL: I understand, your Honor.

2 THE COURT: I think it's a -- you know, whether
3 it required medical intervention, it's a very close
4 question.

5 MS. MERKL: Your Honor, I can just tell you
6 that there are dermatologists here in the City who
7 provide pro bono tattoo removal for victims of human
8 trafficking. That's a service that various
9 dermatologists provide. And it is normally laser
10 surgery, and unfortunately, it's more common than you
11 might expect, that victims are essentially branded by
12 their traffickers --

13 THE COURT: No, no, I don't --

14 MS. MERKL: -- and that requires surgery to
15 remove that scar.

16 THE COURT: To remove the tattoo but not
17 necessarily to alleviate an injury. Look these -- I'm
18 sure that people have tattoos removed in circumstances
19 even where they had them voluntarily --

20 MS. MERKL: Certainly.

21 THE COURT: But I feel more comfortable with --
22 if, in fact, you provide me with evidence of extreme
23 physical pain.

24 MS. MERKL: We'll be in contact with the
25 victim, your Honor, and see what we can do.

Proceedings

1 THE COURT: But for the moment, I am going to
2 leave it as serious physical injury.

3 MS. MERKL: Thank you, your Honor.

4 MR. ROSENBERG: So does that leave us with
5 Odilon's advisory guidelines range of 235 then, to 293,
6 both in the --

7 THE COURT: 292 or 293?

8 MR. ROSENBERG: -- plea agreement, and -- 293 -
9 -

10 THE COURT: 293.

11 MR. ROSENBERG: -- both with --

12 MR. GJELAJ: 293, your Honor.

13 MR. ROSENBERG: -- the agreement and with the
14 PSR?

15 THE COURT: Yes.

16 MS. MERKL: And your Honor, I would just note
17 that for Severiano, the government had not included the
18 serious bodily injury as to Jane Doe 1 since he was not
19 personally involved.

20 THE COURT: Okay. So what is -- I'm -- what is
21 -- where are we? The guidelines range with respect to
22 Severiano is what now?

23 MR. WALLENSTEIN: I still have one -- I mean, I
24 objected to all of the vulnerable victim enhancements for
25 all of the victims. I understand your Honor's position.

Proceedings

1 My position with respect to each of them is what I've
2 already articulated.

3 THE COURT: Right.

4 MR. WALLENSTEIN: And I believe the
5 government's position is the same as well.

6 THE COURT: Right.

7 MR. WALLENSTEIN: So I think you just have to
8 rule on those objections.

9 THE COURT: I did. I rejected them.

10 MR. WALLENSTEIN: Okay.

11 THE COURT: I thought I did anyway.

12 MR. WALLENSTEIN: I said okay but I didn't
13 really mean that. I do have one other objection that I
14 raised in my sentencing memorandum, and that is to the
15 aggravating role, and that is -- as soon as I find it --

16 MS. MERKL: That's to FBF, your Honor, Count
17 1 --

18 MR. WALLENSTEIN: Yes.

19 MS. MERKL: -- of the Northern District of
20 Georgia indictment.

21 THE COURT: Just one second.

22 MR. WALLENSTEIN: Correct. The PSR ascribes no
23 aggravating or mitigating role to Severiano for any of
24 the counts, and the government says there should be an
25 aggravating role but they don't say why. They don't

Proceedings

1 support that. Where is this? It's respect to 1?

2 MR. WALLENSTEIN: It is -- it's actually --
3 it's in the plea agreement. It's not in the PSR. And it
4 is on page 6 of the plea agreement under Count 1 of the
5 Northern District of Georgia indictment for the sex
6 trafficking of FBF.

7 THE COURT: No, it's not in the PSR?

8 MR. WALLENSTEIN: I'm sorry?

9 THE COURT: It's not in the PSR?

10 MR. WALLENSTEIN: It'S not in the PSR.

11 THE COURT: So the --

12 MR. GJELAJ: Sometimes we do things
13 independently, Judge. We did not apply a role
14 enhancement.

15 MS. MERKL: Your Honor, as set forth in the
16 government's sentencing submission, the rationale for
17 doing so states upon the ruling of Judge Amy Totenberg in
18 Odilon Martinez-Rojas' sentencing, as to this same
19 conduct, Judge --

20 THE COURT: Where is this conduct described?

21 MS. MERKL: So page 54 of the government's
22 sentencing submission is discussing the sex trafficking
23 of FBF, and the conduct relating to FBF is set forth in
24 the PSR in paragraph 37.

25 And the judge in Georgia made that the

Proceedings

1 determination as to Odilon --

2 THE COURT: It's in 37 of Severiano --

3 MS. MERKL: Paragraph 37, Severiano's PSR. And
4 the way that the PSR describes Severiano's relationship
5 with FBF's sort of recruiter, is one of managerial
6 control, and that is what Judge Amy Totenberg found. She
7 found that Arturo Rojas Ayoto (ph.), who was the
8 individual who recruited FBF in the Georgia case, had a
9 sort of, you know -- that the two older men, Odilon and
10 Severiano --

11 THE COURT: On what page -- paragraph 37, we're
12 dealing with additional victim, FBF?

13 MS. MERKL: Yes.

14 THE COURT: Let me just read it.

15 (Pause)

16 THE COURT: Is there any particular paragraph
17 you wanted me to look at?

18 MS. MERKL: Your Honor, I believe that
19 paragraphs 39 and 40 are particularly supportive of the
20 government's position that Severiano Martinez-Rojas was
21 essentially training his younger nephew on how to be a
22 trafficker, in directing the trafficking of FBF including
23 instructing his nephew to cut her face when she did not
24 comply with Arturo's demands, similar to Odilon telling
25 Rojas-Quijotal (ph.) to beat FBF.

Proceedings

1 THE COURT: Let me read it.

2 MR. WALLENSTEIN: Judge, as I read --

3 THE COURT: Let me read --

4 MR. WALLENSTEIN: I'm sorry, your Honor.

5 THE COURT: I can't listen and read.

6 (Pause)

7 THE COURT: Okay. I am ready to hear you.

8 MR. WALLENSTEIN: Judge, as I read paragraphs
9 39 and 40 --

10 THE COURT: I interrupted Ms. Merkl.

11 MS. MERKL: Yes, your Honor. As to those
12 paragraphs 39 and 40, it's the government's position that
13 is guiding this younger criminal associate in sort of
14 essentially how to traffic her, is managerial control and
15 leadership in that criminal conduct.

16 Judge Amy Totenberg found that enhancement on
17 the same theory as to Odilon Martinez-Rojas and the
18 government's position is that Severiano Martinez-Rojas,
19 who was equally involved in the direction of the
20 trafficking of that young girl be held similarly
21 responsible for that enhancement, which was already
22 applied to his brother.

23 MR. WALLENSTEIN: Well, I don't agree with
24 that. I think the way these paragraphs read, they
25 describe the offense and Severiano's conduct, as part of

Proceedings

1 the offense, and certainly he's pleaded guilty to
2 participating in the offense. I don't think that this
3 rises to the level of any kind of managerial control.
4 Merely telling someone do a particular act is not
5 sufficient. They have to be in a position of management
6 and control, and essentially to direct pretty much
7 everything that the underling does, and there's no
8 evidence to that effect here.

9 And with all due respect to Judge Totenberg, I
10 wasn't there, I haven't read the record, and maybe she
11 found it as to Odilon, but that doesn't mean it applies
12 to Severiano, and in this case for once, I agree with
13 probation. They did not apply an aggravating role, and I
14 think they were a 100 percent right. I sometimes agree.

15 MS. MERKL: Your Honor, nothing in the
16 guidelines state that he has to be in charge of the whole
17 thing. He's supervising his younger nephew, and giving
18 direction. He's also directing a female associate to
19 teach the girl how to work in prostitution. He's telling
20 his nephew to cut her when she defied him.

21 THE COURT: Where was the teaching of people
22 that you just described?

23 MS. MERKL: Let me find it, your Honor. Your
24 Honor, paragraph 39 describes how she was groomed by
25 another female in the residence. It does not describe

Proceedings

1 the facts as I understood them, and that's described in
2 the government's sentencing submission, that Severiano
3 directed her to do so, and we could certainly find the
4 report on which that is based.

5 THE COURT: Where is that, what paragraph?

6 MS. MERKL: Paragraph 39. "When FBF arrived,
7 her recruiter, Rojas-Quijotal, had been captured at the
8 border." So when she arrived to their home in Georgia,
9 Odilon and Severiano took her and she was then groomed by
10 another female in the residence to work. That female was
11 under the control of those two men in the home.

12 THE COURT: And does this affect the guidelines
13 calculation?

14 MS. MERKL: I don't know if it affects the
15 overall calculation, your Honor, because he has various
16 guidelines that come out at a level 38. I think it does
17 not affect the overall guidelines calculation.

18 THE COURT: Why do I have to deal with this?

19 MS. MERKL: Your Honor, it's a simply a matter
20 of --

21 THE COURT: I could consider the conduct in the
22 sentence that I impose, but I don't know why I have to
23 deal with it as to whether it requires a --

24 THE CLERK: Judge, the microphone.

25 THE COURT: -- it requires a role enhancement,

Proceedings

1 contrary to what probation thinks.

2 MS. MERKL: Your Honor, ultimately, I do think
3 it comes out in the wash.

4 THE COURT: So what --

5 MS. MERKL: So it's up to you.

6 THE COURT: So let's --

7 MR. WALLENSTEIN: I unfortunately agree with
8 that.

9 THE COURT: So I will leave the probation
10 report the way it is. The conduct is a different story
11 in terms of the application in determining what sentence
12 should be imposed.

13 MR. WALLENSTEIN: Judge, I think that I have no
14 other objections to the PSR finally, and so --
15 (Counsel confer)

16 MR. ROSENBERG: The alien smuggling doesn't
17 matter.

18 MR. WALLENSTEIN: It doesn't matter.

19 MS. MERKL: Your Honor --

20 MR. ROSENBERG: It doesn't (indiscernible).

21 THE COURT: So the guidelines remain --

22 THE CLERK: I believe for both defendants,
23 Judge, level 38 to 35 (indiscernible).

24 MS. MERKL: Yes, for the global plea, that's
25 correct.

Proceedings

1 THE COURT: All right. Why don't you sit down?

2 THE CLERK: Hmm?

3 THE COURT: Why doesn't he sit down. I want to
4 sentence each one of them separately.

5 THE CLERK: Okay.

6 (Pause)

7 THE CLERK: Judge, Severiano has taken a seat.
8 Odilon is still before the Court.

9 THE COURT: Okay.

10 MR. ROSENBERG: Thank you, your Honor. Well,
11 one of the other provisions of the plea agreement was
12 that the government was not going to advocate for a
13 consecutive sentence to a sentence that Odilon is now
14 serving, the 262 months sentence that he received in the
15 Northern District of Georgia, and frankly that's a major
16 concern of ours, your Honor, a major application that we
17 have.

18 THE COURT: I'm not going to -- I'm going to
19 run them -- I'm not going to run it consecutively. I'm
20 going to run it concurrently.

21 MR. ROSENBERG: And I just want to make one
22 comment. Our calculation in my sentencing submission
23 came to a level 36, based on the elimination of
24 vulnerable victims that would've made it a 188 to 235
25 range. And I had asked for 188, and the government said

Proceedings

1 well, you know, to was kind of nervy because this conduct
2 was as great as.

3 Let me make clear, I wasn't asking for a 188
4 because I was looking for leniency or to reflect less
5 serious conduct. The only reason that I asked for a
6 lower sentence was that my concern that the Bureau of
7 Prisons would not properly or give him credit if he were
8 to receive a sentence between 235 and 293, for the time
9 -- the five years he's already served in Georgia, as
10 1(b)(1) relevant conduct here, and my concern was that
11 the Bureau of Prisons would not give credit for the first
12 already five years that he's served -- that he's been
13 serving to your Honor's sentence.

14 So I was concerned that he would end up with a
15 longer sentence than your Honor would be imposing,
16 because it would be tacked onto what he's already
17 received, 262 months. So that's the only reason why I
18 asked for a below guidelines range. I'm not saying
19 that --

20 THE COURT: Well, is that true?

21 MR. ROSENBERG: Yes. Well, I am not sure -- we
22 were just looking at something but in terms of what he'll
23 get credit for, it will be May 21st, 2013. The BOP will
24 give him credit up until that point, unless he had also
25 been arrested --

Proceedings

1 MR. GJELAJ: No, he was not.

2 MR. ROSENBERG: Okay. So that's when his clock
3 begins with respect to the BOP on your sentence, your
4 Honor.

5 THE COURT: So does he lose anything? I mean
6 he's claiming that --

7 MR. ROSENBERG: That's my concern, that he
8 doesn't lose anything. Exactly.

9 THE COURT: Yeah.

10 MR. ROSENBERG: If that could be in the
11 judgment, that would be great, so that would give me a
12 lot of --

13 THE COURT: Put it in the judgment.

14 THE CLERK: What was the date again, Mr.
15 GjELAJ?

16 MR. GJELAJ: It is May 21st, 2013.

17 MS. MERKL: Your Honor, that's the arrest date
18 on the PSR. In the government's experience, when these
19 sentences are in the same -- some of the same criminal
20 conduct that's alleged in the RICO that he was already
21 convicted of, which is the government's reason for
22 agreeing completely that they needed to be concurrent
23 time.

24 There's no reason to believe that the
25 sentencing computation folks in Texas are going to mess

Proceedings

1 this up. I mean that just hasn't been our experience,
2 and if that were to occur, the defendant can bring it to
3 our attention in the form of a 2241.

4 MR. ROSENBERG: Well, I'm trying to avoid 2241.

5 THE COURT: Well, what we're talking about is
6 just making it clear, to --

7 MS. MERKL: Yeah, that's fine, too. I just --

8 THE COURT: Yeah.

9 MS. MERKL: -- I don't think that he deserves
10 time off.

11 THE COURT: No. His premise for time off was
12 that he wouldn't get credit.

13 MS. MERKL: Right.

14 THE COURT: So where are we now?

15 MR. ROSENBERG: So where we are, Judge, the
16 sentence that Mr. Odilon is now serving, 262 months,
17 falls right in the middle, if you will, of the sentencing
18 advisory range, and the five years that he spent in jail
19 has been already a life changing event obviously for
20 Odilon, and in my memo, I did mention his background, and
21 his growing up in poverty, and the culture that he grew
22 up in. It's not to excuse it. I quoted the famous
23 street artist, JR, "What we see changes who we are.

24 To what extent that contributed to Odilon's
25 decision making or lack of fortitude to avoid going into

Proceedings

1 this type of business, we can't know. But we do know
2 that he has great remorse, and regret, as I pointed out
3 in my sentencing submissions, and he had time to think
4 about the contrast between the love that he has for his
5 own daughters, and female members of his family, and the
6 way that these offenses occurred, it's stark contrast.

7 And it's given him time to reflect and quite
8 frankly, move to a better place in his head, and in the
9 way he approaches life. He will not -- with his current
10 sentence, he will not be released until he is in his 60s.
11 He's 47-years-old now.

12 THE COURT: His current sentence is 252 months?

13 MS. MERKL: 262.

14 MR. ROSENBERG: 262; 21 years, 10 months. He's
15 been in jail now for approximately more than five years.
16 As I say, it's has been life changing, and we're not
17 minimizing this conduct at all. We recognize the
18 seriousness of -- he does, as well. There's very little
19 that a defendant can do to prove their remorse and their
20 regret, but I can assure your Honor, five years of being
21 away from family, of being -- he doesn't even have email
22 privileges for whatever reason that the Bureau -- that
23 they just decided not to allow him to have.

24 So he's had no family contact. The five years
25 that he spent in jail in this country is the only

Proceedings

1 physical contact he's had with family is -- are his
2 co-defendants. And there is, as your Honor can see,
3 family members back in Mexico who have great affection
4 for him, but he has not been able to see them, and to
5 have normal, familial relationships, and that's what
6 makes this sentence a -- he's a stranger in a strange
7 land, and separated from family, a much more difficult
8 sentence, a much more difficult term of imprisonment.

9 So this is not a situation, as my colleague had
10 mentioned yesterday. He's not going to be eligible for
11 early release from halfway houses, or take advantage of
12 many programs that are offered by the Bureau of Prisons.

13 He first has to face deportation proceedings
14 when there's 262 month sentence as it stands now, even as
15 it stands now, is complete. So this has been just an
16 overall, overarching conspiracy, Georgia and here. It's
17 a case where multiple victims, multiple jurisdictions
18 with all the defendants, not just him.

19 And so in asking for a concurrent sentence,
20 your Honor, I would ask for a sentence of no more than
21 262 months in this case, to run concurrent with his
22 present sentence. It is the same, if you will,
23 overarching conspiracy. It's again, he'll be released
24 from jail at an age when recidivism is statistically
25 lessened, and again, a five-years that he's had in his

Proceedings

1 head, not only a specific deterrence, but I'm quite
2 certain the sentence that he's received already has had a
3 general deterrence, if such is in fact measurable.

4 So there's certainly nothing that would offend
5 the sentence of justice for him to receive a sentence
6 that -- of 262 months or less would not be offended --
7 offend the sentence of justice, your Honor, or be
8 contrary to the sentencing goals under the statute.

9 THE COURT: Do you wish to speak? Do you wish
10 to speak?

11 DEFENDANT ODILON MARTINEZ-ROJAS: Yes. I want
12 to apologize to your Honor. I want to apologize, your
13 Honor, to the U.S. Attorney's Office of the United
14 States, and also to the victims. And while I am
15 remorseful because with these five years that I have
16 already spent in prison, I want to well, re-enter
17 society. That's all.

18 MS. MERKL: Your Honor, it's the government's
19 understanding that one of the victims in the video link
20 to Georgia would like to be heard. This is victim
21 initials MSJ, your Honor.

22 THE COURT: And where is she referred to in the
23 presentence report?

24 MS. MERKL: In the presentence report, your
25 Honor, she is identified under those initials. I will

Proceedings

1 locate the paragraphs.

2 MR. GJELAJ: She is not a Jane Doe.

3 MS. MERKL: She is a victim of the defendant,
4 your Honor, and she is identified in paragraphs 43, 44,
5 45, and 46, MSJ.

6 THE CLERK: MSJ? We're on the record.

7 MSJ: Good afternoon. I am MS (sic). Yes. I
8 want to tell your Honor that to consider and to be fair
9 to give him what he deserves because they're not
10 suffering --

11 THE CLERK: You need to wait for the
12 interpreter to finish interpreting for you before you
13 continue. I am sorry.

14 MSJ: Okay. Because they haven't suffered the
15 minimum part of what we have that they're -- because
16 they're not suffering anything at all by comparison to
17 what we suffer, and I believe that God and you are able
18 to do justice for us, because thanks to them --

19 THE INTERPRETER: Interpreter needs
20 clarification.

21 MSJ: That because of all that I have -- after
22 all that I have suffered through, I suffered from many
23 panic attacks. I cannot have a marital relationship with
24 my husband because I always remember the things I went
25 through, and I implore -- and they ask for forgiveness,

Proceedings

1 but I pray to God to help me to forgive them, but I just
2 can't.

3 I believe your Honor, you have to be fair and
4 leave them in there because as soon as they come out, Mr.
5 Severiano tried to abuse from me. I don't know if you
6 remember and was inside his trailer, he threw me on the
7 floor, and he told me that he would teach me how to serve
8 the clients because Jonathan (ph.) hasn't taught me to do
9 it well.

10 And he was going to teach me how to yell, and
11 the girl came who lived with him, and he was unable to do
12 it. I swear that I didn't want to do everything that
13 they wanted me to do, and I did it because I didn't have
14 a choice. That is all. There is much more left.

15 MS. MERKL: But she can't anymore.

16 THE INTERPRETER: But she can't anymore.

17 THE COURT: Thank you.

18 MS. MERKL: Your Honor, I would also --

19 THE CLERK: Severiano could be seated.

20 MS. MERKL: And I would also note that that
21 victim victim's impact statement filed in the Georgia
22 case was also included as Exhibit C to the government's
23 sentencing memorandum.

24 THE COURT: Is there anything that she didn't
25 say that's in there?

Proceedings

1 MS. MERKL: I'm sorry?

2 THE COURT: Is there anything in the Exhibit C
3 that she did not discuss or that's not in the presentence
4 report?

5 MS. MERKL: No, your Honor. The Exhibit C
6 describes some of the same harms she just described,
7 including her -- and her difficulty in having a normal
8 marital relationship, and how she has been seeing a
9 psychologist to have the strength to move forward.

10 She's described that she's fearful in the event
11 that the defendants get out of jail, fear that they will
12 come for her family, and for her, and how she suffers
13 from panic attacks when she thinks about their release
14 from prison.

15 She also stated in her victim impact statement
16 that "Those people cannot even pay for all the pain that
17 they caused me, or all of the other innocent women by
18 going to jail, innocent women like me who were tricked
19 into believing something, and then had that dream broken.
20 They should be put away for life, a very long sentence,
21 so that they can see what it feels like to be locked up
22 like I was. I was never in agreement with selling my
23 body. They forced me to do this, and I was a virgin at
24 the time when they forced me. My dream had always been
25 to only be with one man, and did not end up like that for

Proceedings

1 me. They ruined my life, and I will never be the same."

2 So that's MSJ, your Honor. In addition MSJ
3 spoke at the proceeding before Judge Totenberg. The
4 transcript of the victim impact statements at that
5 sentencing are included in the government's submission at
6 Exhibit 5.

7 And that, your Honor, I would like to give
8 voice to Jane Doe's 4 victim impact statement. Oh, I'm
9 sorry, your Honor, Jane Doe 4 has just texted that they
10 would like to -- somebody from Georgia has texted that
11 Jane Doe 4 would like to speak as well.

12 THE COURT: I need to take a two-minute break
13 before she starts. I'll be right back.

14 MS. MERKL: Thank you, your Honor.

15 THE CLERK: We're going to take a two-minute
16 break.

17 (Pause)

18 THE CLERK: We're back on the record, counsel.
19 Resuming with Odilon.

20 MS. MERKL: Your Honor, just prior to the
21 break, we received word from the video link in Georgia
22 that the victim alternatively identified as Jane Doe
23 Number 4, and SAM, would like to make a victim impact
24 statement. She is referred to in Odilon Martinez-Rojas'
25 PSR as Jane Doe 4, your Honor, and that's at paragraph

Proceedings

1 20.

2 THE CLERK: Jane Doe Number 4?

3 MS. MERKL: SAM?

4 JANE DOE 4-SAM: Good afternoon. My name is
5 SAM. I would like to say something to the judge. I
6 would like Odilon and Severiano to receive everything
7 (indiscernible), of all of the -- the full weight of the
8 law because I think about all the harm, the harm that
9 they did to us. They're asking for forgiveness. He's
10 asking for forgiveness because the five years that he
11 spent, he hasn't spent them very well.

12 I would like Odilon to know I am not the same
13 as what we are going to be living for the rest of our
14 lives, and I hope that the judge will be fair because of
15 all of the harm that they have done to us.

16 If it were up to me, they would never get out
17 because they will serve their sentence, and then they
18 will get out but the wounds and the traumas that we live
19 through, we will never forget them. He's asking for
20 forgiveness, but I will never ever forgive him. That's
21 all.

22 THE COURT: Thank you.

23 MS. MERKL: Your Honor, just to complete the
24 record, I would note that the typed victim impact
25 statement submitted by that Jane Doe is included in the

Proceedings

1 government's sentencing submission at Exhibit B, and her
2 prior statement at the prior sentencing of Odilon
3 Martinez-Rojas is included as Exhibit F, pages 80 to 81
4 of the transcript from the Northern District of Georgia.

5 So your Honor as to Odilon Martinez-Rojas, the
6 government is requesting a sentence at the high end of
7 the applicable guidelines range. As the Court knows, he
8 is already serving a sentence of 262 months for the
9 victimization of SAM, from whom you've just heard, and
10 two additional one women, one of whom you've heard from
11 today.

12 In addition to those victims, your Honor, he's
13 responsible for two more victims that he personally
14 recruited to bring to this country, in addition to the
15 assisting of trafficking, at least three more as to whom
16 the evidence is set forth in the PSR.

17 To sentence him to the same sentence he
18 received in Georgia would deny justice to those
19 additional victims, your Honor, and it is inappropriate,
20 and is for that reason that we ask for a sentence at the
21 highest end of the range applicable to this defendant.

22 He more than deserves a sentence of 293 months,
23 and I would respectfully submit that that is the
24 appropriate sentence, given the way that the guidelines
25 calculated in his case.

Proceedings

1 THE COURT: Now there are instances in which he
2 physically personally assaulted several of the victims.
3 Are those the same as in Georgia or are they different?

4 MS. MERKL: Your Honor, those are additional
5 victims. So Jane Doe 1 is new to this case, and her
6 victim impact statement, your Honor, is included at
7 Exhibit A. Jane Doe 1 is the individual who was working
8 in the store when she had three young children, and was
9 recruited to come to the United States, sent to work with
10 no guidance as to what the nature of the work would be.
11 When she didn't know how to proceed, and did not perform
12 the work in any kind of fashion because she didn't know
13 how to be prostitute, she was brought back to Odilon's
14 custody and he beat her, raped her, had a female
15 associate inject her with unknown substances on more than
16 one occasion that made her feel groggy. She was beaten
17 so badly, she -- you know, on more than one occasion,
18 that it interrupted her work.

19 In addition your Honor, this defendant
20 threatened her son, and he threatened her on multiple
21 occasions. So Jane Doe 1 is a completely different
22 victim than was presented to the Court in Georgia, your
23 Honor.

24 Same thing, your Honor, as to Jane Doe 9. Jane
25 Doe 9 was not a part of the sentencing in the Georgia

Proceedings

1 case, and in addition to being involved in the
2 trafficking of Jane Doe 9, he threatened Jane Doe 9 to
3 prevent her cooperation of law enforcement at the very
4 beginning of this case when he was first arrested in
5 Georgia.

6 So to account for the additional victimization,
7 and aiding and abetting his co-conspirators as to Jane
8 Does 5, 6 and 7, and the threats to Jane Doe 9, an
9 additional -- a lengthier term of imprisonment than was
10 imposed in Georgia is appropriate.

11 THE COURT: So the guidelines are 236 to 293.

12 MR. ROSENBERG: Yes.

13 THE CLERK: Correct.

14 THE COURT: I'm going to sentence the defendant
15 to the custody of the Attorney General for a period of
16 293 months. I basically agree with Ms. Merkl as to why
17 this should be a sentence at the top of the guidelines
18 range, and not (sic) run concurrently with the sentence
19 in Georgia.

20 MR. ROSENBERG: To run concurrently.

21 THE COURT: To run concurrently, not -- I meant
22 to say not consecutively. And let's see -- and five
23 years supervised release with the following conditions,
24 that if the defendant is removed, he not reenter the
25 United States illegally. The defendant shall not

Proceedings

1 cooperate with, and abide by all instructions -- shall
2 cooperate with, and abide by all instructions of
3 immigration authorities, shall comply with any potential
4 restitution and forfeiture orders. Upon request the U.S.
5 Probation -- upon request, the defendant shall provide
6 the U.S. Probation with a full disclosure of his
7 financial records, including commingled income, expenses,
8 assets and liabilities, to include yearly income tax
9 returns, with the exception of a financial accounts
10 reported, and noted within the presentence report.

11 The defendant is prohibited from maintaining or
12 opening any additional and/or joint checking, savings, or
13 other financial accounts for either personal or business
14 purposes without the knowledge and approval of the U.S.
15 Probation Department.

16 The defendant shall cooperate with the
17 probation officer in the investigation of his financial
18 dealings, and shall provide truthful monthly statements
19 of his income and expenses. The defendant shall
20 cooperate in the signing of any necessary authorizations
21 to release information forms, permitting the U.S.
22 Probation Department to access his financial information
23 and records. The defendant shall comply with any
24 applicable state, and/or federal sex offender
25 registration requirements as instructed by the probation

Proceedings

1 office, or the Bureau of Prisons, or any state offender
2 registration agency in the state where he resides, works
3 or is a student. And I also impose a special assessment
4 of \$200.

5 THE CLERK: Counsel, do you also 45 days in
6 which to address the restitution?

7 MR. ROSENBERG: Yes, please.

8 THE CLERK: Disposition of remaining counts or
9 underlying indictments?

10 MS. MERKL: Your Honor, the government moves to
11 dismiss any open counts in the underlying indictment.

12 THE COURT: They're dismissed.

13 THE CLERK: Has your client waived his right to
14 appeal in the plea agreement?

15 MR. ROSENBERG: Less than 327, yes.

16 THE CLERK: Thank you.

17 MR. ROSENBERG: Your Honor, if you can, Mr.
18 Odilon needs some attention, medical attention at the
19 jail. He's been complaining about bleeding -- rectal
20 bleeding?

21 (Counsel and client confer)

22 MR. ROSENBERG: It's okay now. And the other
23 thing is, I would request that --

24 THE COURT: He's complaining about rectal
25 bleeding, you said?

Proceedings

1 MR. ROSENBERG: I think it's -- translate,
2 please.

3 (Counsel and client confer)

4 MR. ROSENBERG: Okay. I understand since I
5 have -- it's being attended to, your Honor, so you need
6 not include that in your judgment, as far as medical
7 attention. But I would make a request that a
8 recommendation to the Bureau of Prisons that he be
9 designated to a jail with Severiano, his brother. Again,
10 he has no family in this country.

11 THE COURT: I will make that recommendation.

12 MR. ROSENBERG: All right.

13 THE COURT: Okay?

14 MR. ROSENBERG: Okay.

15 THE CLERK: And this defendant is unable to pay
16 a fine, Judge?

17 THE COURT: No, he can't pay a fine.

18 THE CLERK: Thank you, Judge.

19 You can sit down. Can you bring Severiano up,
20 please?

21 (Pause)

22 THE CLERK: Proceeding with the individual
23 sentencing of Severiano, Judge.

24 MR. WALLENSTEIN: Your Honor, I think that
25 Severiano has expressed to your Honor in a letter which I

Proceedings

1 presume you've gotten in my supplemental submission, that
2 expresses his remorse for what he has done. And he says
3 specifically in that letter, that "During the time I have
4 been incarcerated, I have come to realize the evil that I
5 have committed, and I have come to the conclusion that I
6 was very wrong, and also very remorseful. I want you to
7 know that I agree to whatever time you will give me, and
8 that I need to correct my errors and my defects."

9 He'd like to study, and turn himself into a
10 better human being by the time he gets out. He is 54-
11 years-old. There is a mandatory minimum sentence here of
12 15 years, as you know. The guidelines, as you know, are
13 235 to 293, and I am well aware of what your Honor has
14 sentenced the other defendants in this case to since I
15 have been here for two days listening to your Honor
16 impose those sentences.

17 So I have a fair idea of what I think you're
18 going to do, and I would simply ask you to sentence him
19 at the low end of the guidelines. I think that the
20 sentence of 235 or 240 months is more than sufficient to
21 serve the aims of sentencing, and to punish the defendant
22 certainly.

23 He will not have an opportunity for
24 rehabilitation, as many prisoners do because he is not a
25 citizen, because he has no status in this country having

Proceedings

1 been brought here under arrest through an extradition
2 order, so he will not be eligible for any of the programs
3 that the Bureau of Prisons would otherwise make available
4 to him.

5 So he's essentially going to be warehoused for
6 the next 20 years. Now how that plays out in terms of
7 his mental health, I couldn't begin to think. I've heard
8 the victim statements. This was a horrendous crime, and
9 he is truly remorseful for what he's done. I've had
10 many, many discussions with him over time.

11 So I ask your Honor to be as merciful as you
12 possibly can, and to sentence him, as I said, at the low
13 end of the guidelines range.

14 THE COURT: Do you wish to speak?

15 DEFENDANT SEVERIANO MARTINEZ-ROJAS: Before
16 anything else, your Honor, I would like to thank you for
17 allowing me to express my apologies. During the time
18 that I've been here in jail, I'm trying to change, change
19 more, because the harm that I have done, I've come to the
20 conclusion that I -- what I did was wrong.

21 I am sorry. I apologize a thousand times over.
22 to the United States, to the judge, to the victims, and
23 to everyone who is here right now. Once again, thank
24 you.

25 MS. MERKL: Your Honor, we recently heard from

Proceedings

1 some of the victims affected by this defendant's conduct
2 by two of the survivors who are with us via the video
3 telelink, SAM and MSJ, and as MSJ described, your Honor,
4 this defendant attempted to rape her in an effort to
5 train her on how to be a better prostitute upon his
6 conclusion that her trafficker, who she referred to as
7 Jonathan had not done an adequate job.

8 Your Honor, this defendant operated a brother
9 trailer in Alabama, and in that capacity was involved in
10 the victimization of many of the women in this case, as
11 set forth in the PSR. The guidelines, the grouping
12 analysis, the multiple count analysis in this case,
13 capped out. There are victims here in this defendant's
14 guidelines analysis that don't even "count" for
15 guidelines purposes, your Honor.

16 And as a result of that, and as a result of his
17 horrific conduct over years, including the attempted rape
18 of MSJ, the verbal abuse of all of the victims he
19 encountered, his attempted rape of -- his actual rape,
20 excuse me, of Jane Doe 1 that your Honor read about
21 earlier today, it's the government's position that the
22 top end of the guidelines range --

23 THE COURT: He also told Rojas-Quijotal to cut
24 FFB (sic) in her face, according to the presentence
25 report.

Proceedings

1 MS. MERKL: FBF, your Honor.

2 THE COURT: I'm sorry.

3 MS. MERKL: Absolutely. that's -- absolutely,
4 your Honor. So the sum total of the defendant's conduct
5 here --

6 THE COURT: And he may have gone onto beat her
7 because he was directed to by Odilon.

8 MS. MERKL: Agreed. And the sum total of this
9 defendant's conduct, your Honor, that over a span of
10 years, he brutalized -- brutally victimized multiple Jane
11 Does, including Jane Doe 1, SAM, Jane Doe 7, who he
12 personally recruited and trafficked, MSJ, who we just
13 heard from, FBF, and there's no question in the
14 government's mind, your Honor, that his conduct was as
15 culpable, if not more culpable than his brother Odilon.
16 And although the guidelines shake out to the same level,
17 it is the government's position that similar to his
18 brother, he should be sentenced at the highest end of the
19 applicable guidelines range here, as it more
20 appropriately takes into consideration all of that
21 offense conduct than any other sentence within the
22 guidelines range.

23 THE COURT: All right. I'm going to sentence
24 the defendant to the custody of the -- I agree that this
25 is -- with Ms. Merkl's analysis, and I'm going to

Proceedings

1 sentence the defendant to the custody of the Attorney
2 General for a period of 293 months. The custody to run
3 concurrent on all counts. Five years supervised release
4 with the following special condition, that if removed,
5 the defendant may not reenter the United States
6 illegally. The defendant shall cooperate with and abide
7 by all instructions of immigration, shall comply with any
8 potential restitution and forfeiture orders. Upon
9 request, the defendant shall provide the probation
10 department with full disclosure of his financial records,
11 including commingled income, expenses, assets and
12 liabilities, to include yearly income tax returns, with
13 the exception of the financial accounts, reported and
14 noted within the presentence report.

15 The defendant is prohibited from maintaining
16 and/or opening any additional individual and/or joint
17 checking, savings, or other financial accounts, for
18 either personal or business purposes without the
19 knowledge and approval of the probation department.

20 The defendant shall cooperate with the
21 probation office, or in the investigation of his or her
22 financial dealings, and shall provide truthful monthly
23 statements in his income -- of his income and expenses.
24 The defendant shall cooperate in the signing of any
25 necessary authorization to release information forms,

Proceedings

1 permitting the U.S. Probation Department access to his or
2 her financial information.

3 The defendant shall comply with any applicable
4 state, and/or federal offender registration requirements
5 as instructed by the probation officer, by the Bureau of
6 Prisons or any state offender registration agency in the
7 state where he resides, works, or is a student.

8 I also impose a \$300 special assessment.

9 (Pause)

10 MS. MERKL: He had one count of Georgia.

11 THE CLERK: \$300, Judge, right?

12 THE COURT: That's what -- you know, that part
13 I -- he pled to three counts, I assume it's three --

14 THE CLERK: I'm just confirming.

15 MS. MERKL: He did plead to two counts in the
16 Eastern District indictment, and one count in the
17 Northern District of Georgia indictment, your Honor.

18 THE COURT: So what do I give the special
19 assessment -- oh, yeah.

20 MS. MERKL: You're correct.

21 THE COURT: This was Rule 20'd.

22 MS. MERKL: Yes, yes.

23 THE COURT: Yes. Okay.

24 MR. ROSENBERG: But we have two separate
25 indictment numbers here, so I don't know whether you have

Proceedings

1 to do \$200 on one, and \$100 on the other. And I leave
2 that all to Paula.

3 THE CLERK: I'm going to put both indictments
4 on the same judgment.

5 MR. ROSENBERG: Okay.

6 THE CLERK: Disposition of remaining counts and
7 underlying indictments?

8 MS. MERKL: Your Honor, the government moves to
9 dismiss all open counts in the underlying indictment in
10 the Eastern District case. I do not believe there is an
11 underlying indictment in the Northern District case, but
12 if there is, it was not transferred here.

13 THE COURT: Okay. Motion is granted.

14 MR. ROSENBERG: Okay.

15 THE CLERK: And has your client waived his
16 right to appeal in the plea agreement, counsel?

17 MR. ROSENBERG: He has waived his right to
18 appeal any sentence of less than 327 months. However,
19 should he contact me in the next 14 days, I will file a
20 notice on his behalf if that's what he wants.

21 With respect to recommendation, I concur in Mr.
22 Rosenberg's request that Severiano be designated to the
23 same facility as his brother Odilon, recognizing that
24 your Honor can only make a recommendation but I ask you
25 to do so.

Proceedings

1 And I also ask that designate them both, or
2 recommend that they be designated to a facility in Texas,
3 Arizona or New Mexico, as that is -- might facilitate
4 family visitation over the next 25 years.

5 THE COURT: We should probably do that on all
6 of them, in terms of the location of the --

7 THE CLERK: Sure, Judge.

8 THE COURT: -- place of confinement.

9 THE CLERK: You also have 45 days in which to
10 address the restitution issue?

11 MR. ROSENBERG: Yes, please.

12 THE CLERK: Okay. Judge, I assume the same
13 finding of inability to pay a fine for this defendant, as
14 well?

15 THE COURT: Yes.

16 THE CLERK: Thank you very much, counsel.

17 MR. ROSENBERG: Thank you, Judge.

18 THE CLERK: Government, and probation
19 (indiscernible) January 15th.

20 MS. MERKL: Thank you very much, Judge.

21 MR. ROSENBERG: Thank you, your Honor.

22 MR. WALLENSTEIN: Thank you.

23 MR. ROSENBERG: Have a good weekend.

24 MS. LEE: Thank you, Judge.

25 MS. MERKL: Have a good weekend, everybody.

Proceedings

1 And thank you, Georgia.

2 UNIDENTIFIED SPEAKER: Pardon?

3 THE CLERK: We're done.

4 MS. MERKL: We're done.

5 THE CLERK: Thank you very much.

6 (Matter Concluded)

7 -o0o-

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 3RD day of December, 2019.


Linda Ferrara

AAERT CET 656
Transcriptions Plus II, Inc.